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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,630	07/28/2003	Moshe Shnaps	P-5722-US	4315

27130 7590 09/09/2004

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EXAMINER	
DINH, TIEN QUANG	

ART UNIT	PAPER NUMBER
3644	

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/627,630	SHNAPS ET AL.	
	Examiner	Art Unit	
	Tien Dinh	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 June 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) *1-16* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election of Group II in the reply filed on 6/8/04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/8/04.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 17-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6474592. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention is disclosed in U.S. Patent 6474592.

Claims 17-24 rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent no. 6474592.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2). The claimed invention is met by the disclosure of U.S. patent no. 6474592.

Specification

The disclosure is objected to because of the following informalities: The applicant is advised to look at the specification again since there are missing letters in the words in some

pages of the specification. For example, look at page 18, line three. "xample" should be –example-. Please correct throughout the specification.

Appropriate correction is required.

Claim Objections

Claim 22 is objected to because of the following informalities: Please note that claim 22 ends with a semicolon and not a period. Appropriate correction is required.

Please also note that there are two claims 22. The second claim 22 is now claim 23. Claim 23 is not claim 24.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 17-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

It is not understood what the significance of the term "impact assessment unit" mean or how it works. The box 100 showing the data processor 140, resource allocation unit 120 and controller 130 are general in nature and is inherent in computing units in this day and age.

Re claims 22, it is not understood how the negotiation to provide access to a transmitter to transmit signal works. What is this transmitter and how does it work?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17-24, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Shnaps (US 6345784).

Schnaps discloses the method as claimed. Please note that a computing device or "impact assessment unit" is inherent in this day and age. When the signal is received from the smart munition 10 is received on the platform, there is inherent a computer system to process the information. This computer system would inherently include an "impact assessment unit."

Claims 17, 21, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Riley, Dingee et al or Friedenthal et al.

Riley discloses a method of using an impact assessment unit 54, 32, regulating communication through a transceiver/receiver 40 and onboard guidance system 42, 44, and a receiving device 48 on the platform for negotiating access.

Friedenthal et al discloses a method of using an impact assessment unit 16, 18, 22, regulating communication through a transceiver/receiver 30 and onboard guidance system 24, 44 and a receiving device 46, 10 on the platform for negotiating access.

Dingee et al discloses a method of using an impact assessment unit 16, 14, 12 regulating communication through a transceiver/receiver 30 and onboard guidance system 18, 22 and a receiving device 24 on the platform for negotiating access.

Please note that the term "connecting" in claim 17 does not mean that it is necessarily directly physically connected but it could be electronically connected.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 18-20, 22 and 23, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Riley, Dingee et al or Friedenthal et al in view of Cronkhite et al or Eschenbach or Shnaps (US 6345784).

Riley, Dingee et al or Friedenthal et al discloses all claimed parts but is silent on negotiating access to resources associated with the platform electronic system to access audio/visual display system. However, Cronkhite et al, Shnaps, or Eschenbach teaches that negotiating access to resources associated with the platform electronic system to access visual display systems are well known in the art.

It would have been obvious to one skilled in the art at the time the invention was made to have used the steps of negotiating access to resources associated with the platform electronic system to access visual display system in Riley, Dingee et al or Friedenthal et al's system as taught by Cronkhite et al, Shnaps or Eschenbach to know whether the target is hit or miss. Please note that audio systems are well known in this day and age.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McIngvale, Ahlstrom, Babb et al, Sallee et al '372, and Sallee et al '355 disclose missiles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tien Dinh whose telephone number is 703-308-2798. The examiner can normally be reached on 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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